

Before The  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

RECEIVED  
OCT 11 1996  
FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF SECRETARY

In the Matter of )  
 )  
Section 257 Proceeding to )  
Identify and Eliminate )  
Market Entry Barriers for )  
Small Businesses )  
 )

GN Docket No. 96-113

DOCKET FILE COPY ORIGINAL

REPLY COMMENTS OF FAYE BROWN-BLACKWELL, KZWA-FM

On September 27, 1996, Ms. Faye Brown-Blackwell, majority owner of KZWA-FM in Lake Charles, Louisiana filed comments in the above-captioned proceeding. These Reply Comments incorporate additional material to be included in the file, regarding the activities of Kent Foster. Ms. Blackwell, an African American female, contends that Mr. Foster, a former Ronald Reagan appointee and telecommunications financier, agreed to finance her award and operation of the station as majority stockholder but balked on that agreement. Ms. Blackwell made her own arrangements to finance the station and save the license from default, and took possession of corporate stock for her contribution. Although Mr. Foster has not contributed the agreed finances, he seeks to revoke Ms. Blackwell's shares and dilute her equity interest.

In the original Comments, Ms. Blackwell contends that her un-investigated complaints to the Federal Communications Commission of Mr. Foster's apparent abuse of the Commission's process is a barrier to her broadcast ownership. In addition, she contends that Mr. Foster is the real party in interest, not his mother and sister who were installed as minority shareholders. Also, Ms. Blackwell presents allegations of evidence that Mr. Foster had planned to

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covertly seize ownership of the station and resell it immediately in apparent violation of the Commission's anti-trafficking rules.

Ms. Blackwell re-emphasizes herein the necessity for the Commission to effectively enforce its rules and to investigate substantiated complaints that could affect the public interest. She also urges the Commission to investigate more adequately the financial qualifications of applicants for telecommunications licenses.

#### **HARM TO THE PUBLIC INTEREST**

Attached as Exhibit A is Arbitron ratings information for the two markets served by KZWA, Lake Charles, Louisiana and Beaumont-Port Arthur, Texas. The numbers demonstrate that the station is ranked first among various demographic segments. If the Commission does not investigate and rectify the allegations against Kent Foster, and the Louisiana Court does not rule in favor of Ms. Blackwell, the ownership of the station would no longer be African American. Furthermore, Kent Foster may be able to "traffic" the station as he had intended to an entity which is not likely to be entrenched in the community, and not likely to be as sensitive to the public interest.

#### **FINANCIAL QUALIFICATIONS OF LICENSEES**

Attached as Exhibit B are documents regarding the financial commitments relied upon by Ms. Blackwell in certifying her financial qualifications as station owner. The documents demonstrate that Kent Foster, his sister and his mother represented that they were able to and intended to provide the finances needed by the B&C Broadcasting (the corporate owner). Despite continued assurances, however, neither party provided the money as agreed.

Other documents included in that exhibit reveal that Kent Foster has run afoul of Commission rules in the past. Specifically, he has before pledged money to a communications owner only to renege on his commitment.

#### **FCC ENFORCEMENT OF RULES**

Ms. Blackwell has repeatedly complained to the Commission concerning Kent Foster's apparent abuse of the Commission's rules. Specifically, Ms. Blackwell has alleged that Mr. Foster (and by extension his sister and mother) may not have been financially qualified to agree to lend the money for the station. Also, Ms. Blackwell contends that Mr. Foster set up his sister and mother as a "front" for his real ownership interest. Finally, she contends that Mr. Foster had taken steps to sell the station before it even went on the air in apparent contravention of the anti-trafficking rules. The Commission, however, has turned a deaf ear.

#### **CONCLUSION**

These Reply Comments introduce additional supporting material and re-emphasizes the necessity for the Commission to more aggressively enforce its rules. Failure of the Commission to act on substantiated complaints jeopardizes the public interest. More importantly, it acts as a significant barrier to the entry of minorities and women into the telecommunications marketplace.

Respectfully submitted,

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EXHIBIT A

# ***Did You Know?***

## ***KZWA-105.3***

### ***is***

***#1 With Adults 18-34(Monday-Sunday 6a.m.-12 midnight)***

***#1 With women 18-34(Monday-Sunday 6a.m.-12midnight)***

***#1 With Adults 18-34(weekends 6a.m.-12 midnight)***

***#1 With Adults 18-49(weekends 6a.m.-12 midnight)***

***#2 With Adults 18-49(weekends 6a.m.-12 midnight)***

***#2 With Adults 18-49(Monday-Sunday 6a.m.-12 midnight)***

***#2 With Men 18-34(Monday-Sunday 6a.m.-12 midnight)***

***#2 With Women 18-49(Monday-Sunday 6a.m.-12 midnight)***

***#2 With Women 25-54(Monday-Sunday 6a.m.-12midnight)***

***#1 Tie With Women 18-34(Monday-Friday 6a.m.-7p.m.)***

# KZWA STRENGTHS

Beaumont/Port Arthur, Tx.

- #1 Men 18-34 Weekends(10a.m.-7p.m.) Tie-18.5% Share!!
- #1 Women 18-49 Monday-Friday(7p.m.-12midnight)
- #1 Women 25-54 Monday-Friday(7p.m.-12midnight)
- #2 Men 18-49 Weekends(10a.m.-7p.m.)
- #2 Men 18-34 Monday-Sunday(6a.m.-12 midnight)
- #2 Men 18-49 (11.4%) Weekends (10a.m.-7p.m.)
- #2 Men 18-34(15.4%) Weekends(6a.m.-12midnight)
- #2 Adults 18-49(10.7%) Monday-Friday(7p.m.-12midnight)
- #2 Adults 18-34(11.5%) Weekends(10a.m.-7p.m.)
- #3 Men 18-34(9.2% tie) Overall Monday-Friday(6a.m-7p.m.)
- #3 Men 25-54(11.7%) Weekends(10a.m.-7p.m.)
- #3 Adults 18-34(11.2%) Weekends(6a.m.-midnight)
- #3 Men 18-34(9.6% tie) Monday-Friday(3p.m.-7p.m.)
- #3 Men 18-34(tie KQXY) Monday-Friday(6a.m.-12midnight)
- #4 Men 18-34 Drive Times Combined-Monday-Friday(6a.m.-10a.m/3p.m-7p.m.)
- #4 Men 18-34(9.2%) Monday-Friday(6a.m.-7p.m.)
- #4 Men 18-49 Monday-Sunday(6a.m.-12midnight)

# Target Listener Trends

Persons 18-34																			
Monday-Sunday 6AM-MID				Monday-Friday 6AM-10AM				Monday-Friday 10AM-3PM				Monday-Friday 3PM-7PM				Monday-Friday 7PM-MID			
AQH (00)	Cume (00)	AQH Rtg	AQH Shr	AQH (00)	Cume (00)	AQH Rtg	AQH Shr	AQH (00)	Cume (00)	AQH Rtg	AQH Shr	AQH (00)	Cume (00)	AQH Rtg	AQH Shr	AQH (00)	Cume (00)	AQH Rtg	AQH Shr
<b>KAOK-AM</b>																			
SP '96		9		1	9	.2	1.3												
SP '95	1	18	.2	2	5	.5	1.9	3	16	.7	2.7		3				3		
SP '94	2	21	.5		4			5	14	1.2	4.8	2	11	.5	2.0		2		
<b>KBJU-FM</b>																			
SP '96	8	121	1.9	11	70	2.7	14.1	13	90	3.2	15.3	10	84	2.4	12.2	3	36	.7	8.1
SP '95	9	163	2.2	12	92	2.9	11.3	10	77	2.4	8.8	14	109	3.4	14.0	5	54	1.2	12.8
SP '94	20	213	4.7	33	139	7.7	35.1	31	127	7.3	29.5	23	144	5.4	23.0	9	80	2.1	20.5
<b>KEZM-AM</b>																			
SP '96	1	9	.2	2	3	.5	2.6	2	3	.5	2.4	2	5	.5	2.4		2		
SP '95		5			5				3				3						
SP '94	4	32	.9	6	20	1.4	6.4	6	16	1.4	5.7	6	13	1.4	6.0	2	8	.5	4.5
<b>KHLA-FM</b>																			
SP '96	7	117	1.7	8	50	1.9	10.3	7	64	1.7	8.2	6	77	1.5	7.3	4	37	1.0	10.8
SP '95	10	144	2.4	16	71	3.8	15.1	16	81	3.8	14.2	11	86	2.6	11.0	4	37	1.0	10.3
SP '94	10	157	2.3	13	99	3.0	13.8	17	104	4.0	16.2	15	103	3.5	15.0	8	56	1.9	18.2
<b>+KKG-FM</b>																			
SP '96	10	97	2.4	13	63	3.2	16.7	16	57	3.9	18.8	16	74	3.9	19.5	3	41	.7	8.1
SP '95	12	131	2.9	13	88	3.1	12.3	17	72	4.1	15.0	15	98	3.6	15.0	5	42	1.2	12.8
SP '94	4	86	.9	5	43	1.2	5.3	3	43	.7	2.9	8	58	1.9	8.0	4	24	.9	9.1
<b>KLCL-AM</b>																			
SP '96		5						1	5	.2	1.2		2						
SP '95		5							2				3				3		
SP '94		7											3				7		
<b>KXZZ-AM</b>																			
SP '96	3	52	.7	3	24	.7	3.8	2	18	.5	2.4	5	26	1.2	6.1	3	26	.7	8.1
SP '95	1	32	.2	5	20	1.2	4.7		16			1	13	.2	1.0		9		
SP '94	7	65	1.6	6	62	1.4	6.4	3	33	.7	2.9	9	53	2.1	9.0	6	44	1.4	13.6
<b>KYKZ-FM</b>																			
SP '96	12	144	2.9	12	87	2.9	15.4	15	95	3.6	17.6	15	106	3.6	18.3	7	61	1.7	18.9
SP '95	23	199	5.5	35	147	8.4	33.0	39	142	9.4	34.5	26	148	6.2	26.0	4	66	1.0	10.3
SP '94	13	159	3.0	13	106	3.0	13.8	22	110	5.2	21.0	18	101	4.2	18.0	5	47	1.2	11.4
<b>KZVA-FM</b>																			
SP '96	13	105	3.2	11	63	2.7	14.1	12	59	2.9	14.1	15	76	3.6	18.3	12	75	2.9	32.4
SP '95	12	105	2.9	12	56	2.9	11.3	10	58	2.4	8.8	14	78	3.4	14.0	10	53	2.4	25.6
SP '94	**	**	**	**	**	**	**	**	**	**	**	**	**	**	**	**	**	**	**
<b>KAJN-FM</b>																			
SP '96	2	30	.5	4	19	1.0	5.1	3	18	.7	3.5	3	21	.7	3.7	2	11	.5	5.4
SP '95	1	20	.2	3	14	.7	2.8	4	15	1.0	3.5	2	16	.5	2.0				
SP '94	1	22	.2																

10-10-94

## Target Listener Trends

	Persons 18-34															
	Monday-Sunday 8AM-10AM				Monday-Friday 8AM-10AM				Monday-Friday 10AM-3PM				Monday-Friday 3PM-7PM			
	AQH (00)	Cume (00)	AQH Rtg	AQH Shr	AQH (00)	Cume (00)	AQH Rtg	AQH Shr	AQH (00)	Cume (00)	AQH Rtg	AQH Shr	AQH (00)	Cume (00)	AQH Rtg	AQH Shr
KARK-AM																
SP '96		9			1	9	.2	1.3								
SP '95	1	18	.2	1.2	2	5	.5	1.9	3	16	.7	2.7		3		
SP '94	2	21	.3	2.7		4			5	14	1.2	4.8	2	11	.5	2.0
KBTU-FM																
SP '96	8	121	1.9	12.1	11	70	2.7	14.1	13	90	3.2	15.3	10	84	2.4	12.2
SP '95	9	163	2.2	10.8	12	92	2.9	11.3	10	77	2.4	8.8	14	109	3.4	14.0
SP '94	20	213	4.7	27.0	33	139	7.7	35.1	31	127	7.3	29.5	23	144	5.4	23.0
KEZN-AM																
SP '96	1	9	.2	1.5	2	3	.5	2.6	2	3	.5	2.4	2	5	.5	2.4
SP '95		5				5				3				3		
SP '94	4	32	.9	5.4	8	20	.4	6.4	8	16	1.4	5.7	6	13	1.4	6.0
KRLA-FM																
SP '96	7	117	1.7	10.6	8	50	1.9	10.3	7	54	1.7	8.2	6	77	1.5	7.3
SP '95	10	144	2.4	12.0	16	71	3.8	15.1	16	81	3.8	14.2	11	86	2.6	11.0
SP '94	10	157	2.3	13.5	13	98	3.0	13.8	17	104	4.0	16.2	15	103	3.5	15.0
KYCE-FM																
SP '96	10	97	2.4	15.2	13	63	3.2	16.7	16	57	3.9	18.8	16	74	3.9	19.5
SP '95	12	131	2.9	14.5	13	88	3.1	12.3	17	72	4.1	15.0	15	98	3.6	15.0
SP '94	4	86	.9	5.4	5	43	1.2	5.3	3	43	.7	2.9	8	58	1.9	8.0
KLCL-AM																
SP '96		5							1	5	.2	1.2		2		
SP '95		5								2				3		
SP '94		7												3		
KZZZ-AM																
SP '96	3	52	.7	4.5	3	24	.7	3.8	2	18	.5	2.4	5	26	1.2	6.1
SP '95	1	32	.2	1.2	5	20	1.2	4.7		16			1	13	.2	1.0
SP '94	7	65	1.6	9.3	6	82	1.4	6.4	3	33	.7	2.9	9	53	2.1	9.0
KYCE-FM																
SP '96	12	144	2.9	18.2	12	87	2.9	15.4	15	95	3.6	17.6	15	106	3.6	18.3
SP '95	23	180	5.5	27.7	35	147	8.1	33.0	39	142	8.4	34.5	28	148	6.2	28.0
SP '94	13	156	3.0	17.6	13	106	3.0	13.8	22	110	5.2	21.0	18	101	4.2	18.0
KZMA-FM																
SP '96	13	105	3.2	19.7	11	63	2.7	14.1	12	59	2.9	14.1	15	76	3.6	18.3
SP '95	12	105	2.9	14.5	12	58	2.9	11.3	10	58	2.4	8.6	14	78	3.4	14.0
SP '94	**	**	**	**	**	**	**	**	**	**	**	**	**	**	**	**
KALN-FM																
SP '96	2	30	.5	3.0	4	19	1.0	5.1	3	18	.7	3.5	3	21	.7	3.7
SP '95	1	20	.2	1.2	3	14	.7	2.6	4	15	1.0	3.5	2	16	.5	2.0
SP '94	1	22	.2	1.4	2	20	.5	2.1	1	13	.2	1.0	2	15	.5	2.0
KALC-AM																
SP '96		9			1	6	.2	1.3	1	6	.2	1.2		3		
SP '95		8			1	3	.2	.9	1	5	.2	.9		5	.2	1.0
SP '94		19								7				10	.5	2.0
KATB-FM																
SP '96		10				6				6	.2	1.2		4		
SP '95	2	22	.5	2.4	1	14	.2	.9	2	12	.5	1.8		15	.5	2.0
SP '94	**	**	**	**	**	**	**	**	**	**	**	**	**	**	**	**
KBOC-FM																
SP '96		13			1	7	.2	1.3	1	7	.2	1.2		7		
SP '95		18				3				4				12		
SP '94	**	**	**	**	**	**	**	**	**	**	**	**	**	**	**	**

\*\* Station(s) not reported  
this survey.\* Listener estimates adjusted for  
reported broadcast schedule.+ Station(s) changed call  
letters - see Page 13.4-Book: Avg. of current and previous 3 surveys.  
2-Book: Avg. of most recent 2 surveys.

LAKE CHARLES, LA

ARBITRON

17

SPRING 1996

Listener Estimates/Metro

## Target Listener Trends

	Persons 18-49															
	Monday-Sunday 8AM-10AM				Monday-Friday 8AM-10AM				Monday-Friday 10AM-3PM				Monday-Friday 3PM-7PM			
	AQH (00)	Cume (00)	AQH Rtg	AQH Shr	AQH (00)	Cume (00)	AQH Rtg	AQH Shr	AQH (00)	Cume (00)	AQH Rtg	AQH Shr	AQH (00)	Cume (00)	AQH Rtg	AQH Shr
KARK-AM																
SP '96	2	34	.3	1.6	1	11	.1	.6	5	18	.6	2.9	3	11	.4	2.0
SP '95	3	89	.4	2.0	3	15	.4	1.8	5	50	1.1	4.3	3	23	.4	1.8
SP '94	3	48	.4	2.3	1	8	.1	.6	6	27	.9	3.2	3	19	.4	1.8
KBTU-FM																
SP '96	14	211	1.8	11.2	19	127	2.4	11.6	22	141	2.8	12.9	17	143	2.1	11.5
SP '95	12	205	1.5	9.1	15	129	1.8	7.8	15	99	1.8	7.2	16	139	2.0	8.6
SP '94	24	287	3.0	18.5	38	184	4.9	22.3	38	184	4.8	20.4	28	179	3.8	16.8
KEZN-AM																
SP '96	5	42	.6	4.0	10	33	1.3	6.1	8	22	1.0	4.7	5	29	.6	3.4
SP '95	2	44	.3	1.3	5	38	.8	3.1	4	24	.5	1.8	4	23	.5	2.2
SP '94	8	74	1.0	6.2	11	47	1.4	6.3	12	44	1.5	6.5	12	44	1.5	7.2



SP '94	22	289	2.3	13.4	30	142	3.8	15.6	31	155	3.9	14.9	22	184	2.8	11.9	7	73	1.9	11.1
SP '95	18	170	2.3	14.4	23	117	2.9	14.0	28	99	3.5	16.4	28	133	3.5	18.9	7	74	1.9	11.1
SP '96	15	184	1.9	10.1	20	122	2.5	10.4	22	107	2.8	10.6	23	135	2.9	12.4	6	89	1.8	6.7
SP '94	5	141	.6	3.8	8	67	1.0	4.8	4	69	.5	2.2	10	88	1.3	6.0	4	37	.5	6.3
KLCL-AM																				
SP '96		5								5	.1	.6		2						
SP '95	1	18	.1	.7	1	5	.1	.5	1	10			1	11	.1	.5	1	8	.1	1.4
SP '94		19								2				3				9		
KXZZ-AM																				
SP '96	6	89	.8	4.8	10	48	1.3	6.1	8	29	1.0	4.7	6	37	.8	4.1	3	35	.4	4.8
SP '95	3	82	.4	2.0	9	36	1.1	4.7	1	33	.1	.5	1	24	.1	.5		14		
SP '94	13	128	1.6	10.0	14	104	1.8	8.0	8	78	1.0	4.3	15	98	1.9	9.0	9	89	1.1	14.1
KYKZ-FM																				
SP '96	25	300	3.1	20.0	34	183	4.3	20.7	32	178	4.0	18.7	28	194	3.5	18.9	14	97	1.8	22.2
SP '95	42	343	5.3	28.2	63	265	8.0	32.8	69	252	8.7	33.2	54	252	6.8	29.2	11	112	1.4	15.9
SP '94	30	295	3.8	23.1	37	210	4.7	21.1	47	188	5.9	25.3	36	210	4.5	21.6	9	88	1.1	14.1
KZNA-FM																				
SP '96	19	189	2.4	15.2	20	102	2.5	12.2	18	69	2.3	10.5	22	116	2.8	14.9	14	101	1.8	22.2
SP '95	20	168	2.5	13.4	20	95	2.5	10.4	20	87	2.5	9.6	28	130	3.5	15.1	18	83	2.3	26.1
SP '94	**	**	**	**	**	**	**	**	**	**	**	**	**	**	**	**	**	**	**	**
KAM-FM																				
SP '96	4	62	.5	3.2	6	41	.8	3.7	7	38	.9	4.1	5	41	.6	3.4	2	28	.3	3.2
SP '95	3	50	.4	2.0	4	29	.5	2.1	5	33	.8	2.9	6	44	.8	3.2	1	23	.1	1.4
SP '94	2	48	.3	1.5	3	43	.4	1.7	3	28	.4	1.8	4	31	.5	2.4	2	16	.3	3.1
KALD-AM																				
SP '96	1	27	.1	.8	1	9	.1	.6	3	10	.4	1.8	2	10	.3	1.4		6		
SP '95	1	26	.1	.7	2	13	.3	1.0	2	12	.2	1.0	3	15	.4	1.8		7		
SP '94	2	55	.3	1.5	4	14	.5	2.3	4	20	.5	2.2	5	28	.4	1.8		18		
KAYD-FM																				
SP '96	13					9			1	6	.1	.6		4				4		
SP '95	2	28	.3	1.3	1	20	.1	.5	2	18	.3	1.0	2	18	.3	1.1	1	9	.1	1.4
SP '94	**	**	**	**	**	**	**	**	**	**	**	**	**	**	**	**	**	**	**	**
KBCI-FM																				
SP '96	19				1	8	.1	.8	1	7	.1	.6		7			1	9	.1	1.4
SP '95	21				3				7					12						
SP '94	**	**	**	**	**	**	**	**	**	**	**	**	**	**	**	**	**	**	**	**

\*\* Station(s) not reported this survey.

\* Listener estimates adjusted for reported broadcast schedule.

+ Station(s) changed call letters - see Page 13.

1-Book: Avg. of current and previous 3 surveys.  
2-Book: Avg. of most recent 2 surveys.

LAKE CHARLES, LA

ARBTRON  
20

SPRING 1996

## Target Listener Trends

Persons 25-54																								
Monday-Sunday 6AM-9AM					Monday-Friday 9AM-12PM				Monday-Friday 12PM-3PM				Monday-Friday 3PM-7PM				Monday-Friday 7PM-9PM							
AQH (00)	Cume (00)	AQH Rtg	AQH Stv		AQH (00)	Cume (00)	AQH Rtg	AQH Stv		AQH (00)	Cume (00)	AQH Rtg	AQH Stv		AQH (00)	Cume (00)	AQH Rtg	AQH Stv		AQH (00)	Cume (00)	AQH Rtg	AQH Stv	
2	42	.3	1.8		2	10	.3	1.3		5	24	.7	3.2		3	19	.4	2.3			5			
2	55	.3	1.5		3	10	.4	1.8		7	42	1.0	3.9		4	23	.5	2.3			9			
3	55	.4	2.6		1	8	.1	.6		8	35	1.1	4.7		4	21	.5	2.8			2			
13	182	1.8	11.5		18	114	2.4	11.5		21	118	2.8	13.5		16	132	2.0	11.4		4	51	.5	8.2	
8	148	1.1	6.1		9	75	1.2	5.3		11	87	1.5	6.1		11	100	1.5	6.4		1	36	.1	1.8	
18	203	2.5	15.5		31	124	4.3	18.3		29	112	4.0	17.0		20	128	2.8	14.0		7	83	1.0	15.5	
6	47	.8	5.3		10	31	1.4	6.4		8	26	1.1	5.1		5	32	.7	3.6		2	14	.3	4.1	
4	55	.6	3.0		8	45	1.1	4.7		8	28	1.1	4.4		5	27	.7	2.9			12			
8	72	1.1	6.9		10	45	1.4	5.9		12	45	1.7	7.0		12	48	1.7	8.4		6	22	.8	13.3	
13	200	1.8	11.5		18	130	2.4	11.5		16	113	2.2	10.3		11	126	1.5	8.3		6	88	.8	12.2	
20	220	2.8	15.2		28	127	3.9	16.4		28	121	3.9	15.5		23	150	3.2	13.5		9	78	1.2	16.1	
20	282	2.8	17.2		29	166	4.0	17.2		29	163	4.0	17.0		22	178	3.0	15.4		7	87	1.0	15.6	
16	143	2.2	14.2		20	108	2.7	12.8		22	83	3.0	14.1		25	118	3.4	18.9		8	67	.8	12.2	
12	147	1.7	9.1		17	98	2.3	9.9		17	83	2.3	9.4		21	117	2.9	12.3		4	53	.6	7.1	
4	124	.6	3.4		8	68	1.1	4.7		3	80	.4	1.8		7	82	1.0	4.9		2	34	.3	4.4	
9					4					1	5	.1	.6		7					4				
1	18	.1	.8		1	5	.1	.6		10				1	11	.1	.6		1	8	.1	1.8		
16										2										6				
4	85	.5	3.5		9	40	1.2	5.8		7	23	.9	4.5		3	23	.4	2.3		1	15	.1	2.0	
3	80	.4	2.3		7	27	1.0	4.1		1	25	.1	.5		2	24	.3	1.2			12			
10	108	1.4	8.6		11	78	1.5	6.5		6	84	.8	3.5		13	83	1.8	9.1		7	56	1.0	15.6	
25	279	3.4	22.1		36	169	4.9	23.1		30	180	4.1	19.2		30	180	4.1	22.7		14	83	1.9	26.6	
39	318	5.4	29.5		58	242	8.0	33.9		61	224	8.4	33.7		52	243	7.2	30.4		10	99	1.4	17.9	
29	273	4.0	25.0		39	197	5.4	23.1		47	170	6.5	27.5		35	206	4.8	24.6		8	72	.8	13.3	
14	130	1.9	12.4		17	84	2.3	10.9		15	74	2.0	9.6		17	98	2.9	12.9		9	70	1.2	16.4	
16	140	2.2	12.1		16	73	2.2	9.4		18	73	2.5	9.9		25	110	3.4	14.6		15	68	2.1	25.6	
**	**	**	**		**	**	**	**		**	**	**	**		**	**	**	**		**	**	**	**	**
5	62	.7	4.4		6	38	.8	3.8		7	38	.9	4.5		5	35	.7	3.8		3	28	.4	6.1	
4	65	.6	3.0		4	35	.6	2.3		6	35	.8	3.3		5	48	.8	3.6		1	30	.1	1.8	
2	56	.3	1.7		3	48	.4	1.8		3	24	.1	1.8		2	24	.1	1.8						

1-Book: Avg. of current and previous 3 surveys.  
2-Book: Avg. of most recent 2 surveys.



## Listener Estimates/Metro

## Target Listener Trends

Persons 18-34																				
Monday-Sunday 6AM-MID				Monday-Friday 6AM-10AM				Monday-Friday 10AM-3PM				Monday-Friday 3PM-7PM				Monday-Friday 7PM-MID				
AQH (00)	Cume (00)	AQH Rtg	AQH Shr	AQH (00)	Cume (00)	AQH Rtg	AQH Shr	AQH (00)	Cume (00)	AQH Rtg	AQH Shr	AQH (00)	Cume (00)	AQH Rtg	AQH Shr	AQH (00)	Cume (00)	AQH Rtg	AQH Shr	
KALO-AM																				
SP '96	6	102	.7	4.1	7	49	.8	4.5	10	56	1.2	5.3	4	20	.5	2.2	1	14	.1	1.1
FA '95	5	71	.6	3.7	5	29	.6	2.5	8	33	1.0	4.3	4	28	.5	2.6	1	16	.1	1.6
2-Book	6	87	.7	3.9	6	39	.7	3.5	9	45	1.1	4.8	4	24	.6	2.4	1	15	.1	1.4
SP '95	2	63	.2	1.3		5							1	18	.1	.6		4		
FA '94	4	66	.5	3.1	6	30	.7	3.1	2	49	.2	1.1	4	31	.5	2.4	2	19	.2	3.4
SP '94	7	85	.8	4.6	12	30	1.4	6.4	6	55	.7	3.2	5	45	.6	2.9	4	23	.5	4.0
+KAYD-AM																				
SP '96																				
FA '95																				
2-Book																				
SP '95	**	**	**	**	**	**	**	**	**	**	**	**	**	**	**	**	**	**	**	**
FA '94	**	**	**	**	**	**	**	**	**	**	**	**	**	**	**	**	**	**	**	**
SP '94	**	**	**	**	**	**	**	**	**	**	**	**	**	**	**	**	**	**	**	**
KAYD-FM																				
SP '96	22	253	2.6	15.2	26	164	3.1	16.8	31	158	3.7	16.3	29	180	3.5	15.8	11	98	1.3	12.2
FA '95	26	286	3.1	19.1	42	159	5.1	21.0	42	157	5.1	22.6	30	194	3.6	19.4	10	92	1.2	15.6
2-Book	24	270	2.9	17.2	34	162	4.1	18.9	37	158	4.4	19.5	30	187	3.8	17.8	11	95	1.3	13.9
SP '95	20	245	2.4	13.4	23	180	2.7	12.6	23	166	2.7	10.9	19	185	2.2	11.0	8	99	.9	10.3
FA '94	23	314	2.7	17.6	36	241	4.2	18.8	33	184	3.9	17.7	36	195	4.2	21.6	9	113	1.1	15.3
SP '94	10	195	1.2	6.6	11	119	1.3	5.9	16	115	1.9	8.5	13	136	1.5	7.5	6	94	.7	5.9
KIOC-FM																				
SP '96	11	214	1.3	7.6	14	108	1.7	9.0	8	101	1.0	4.2	17	134	2.0	9.3	9	97	1.1	10.0
FA '95	19	248	2.3	14.0	33	187	4.0	16.5	23	140	2.8	12.4	22	165	2.6	14.2	11	90	1.3	17.2
2-Book	15	231	1.8	10.8	24	148	2.9	12.8	16	121	1.8	8.3	20	150	2.3	11.8	10	84	1.2	13.6
SP '95	15	275	1.8	10.1	18	169	2.1	9.8	27	169	3.2	12.8	17	163	2.0	9.9	7	111	.8	9.0
FA '94	12	243	1.4	9.2	14	141	1.6	7.3	18	138	2.1	9.7	14	109	1.6	8.4	8	62	.9	13.6
SP '94	21	265	2.5	13.9	34	207	4.0	18.1	30	152	3.5	15.9	25	160	2.9	14.4	10	153	1.2	9.9
+KJUS-AM																				
SP '96	1	29	.1	.7	1	14	.1	.6		5			1	19	.1	.5		7		
FA '95		8											1	8	.1	.6				
2-Book	1	19	.1	.4	1	7	.1	.3		3			1	14	.1	.8		4		
SP '95	**	**	**	**	**	**	**	**	**	**	**	**	**	**	**	**	**	**	**	**
FA '94	**	**	**	**	**	**	**	**	**	**	**	**	**	**	**	**	**	**	**	**
SP '94	**	**	**	**	**	**	**	**	**	**	**	**	**	**	**	**	**	**	**	**
KKNY-FM																				
SP '96	19	190	2.3	13.1	17	99	2.0	11.0	34	118	4.1	17.9	25	126	3.0	13.7	8	75	1.0	8.9
FA '95	10	169	1.2	7.4	13	104	1.6	6.5	21	98	2.5	11.3	12	104	1.4	7.7	2	11	.2	3.1
2-Book	15	180	1.8	10.3	16	102	1.8	8.8	28	108	3.3	14.6	19	115	2.2	10.7	5	43	.6	8.0
SP '95	12	193	1.4	8.1	13	96	1.5	7.1	19	81	2.2	9.0	15	116	1.8	8.7	5	47	.6	6.4
FA '94	9	166	1.1	6.9	13	98	1.5	6.8	12	84	1.4	6.5	10	96	1.2	6.0	4	30	.5	6.8
SP '94	8	164	.9	5.3	6	61	.7	3.2	12	77	1.4	6.3	14	95	1.6	8.0	5	69	.6	5.0
KLVI-AM																				
SP '96	1	36	.1	.7	1	12	.1	.6	2	14	.2	1.1	2	25	.2	1.1	1	5	.1	1.1
FA '95	1	34	.1	.7	3	15	.4	1.5		18				7						
2-Book	1	35	.1	.7	2	14	.3	1.1	1	16	.1	.6	1	16	.1	.8	1	3	.1	.6
SP '95	3	70	.4	2.0	3	20	.4	1.6	6	40	.7	2.8	5	49	.6	2.9				
FA '94	3	53	.4	2.3	8	24	.9	4.2	6	34	.7	3.2	5	34	.6	3.0		6		
SP '94	6	108	.7	4.0	12	57	1.4	6.4	18	59	2.1	9.5	6	35	.7	3.4		11		
KQXY-FM																				
SP '96	16	293	1.9	11.0	20	191	2.4	12.9	23	190	2.8	12.1	21	202	2.5	11.5	8	139	1.0	8.9
FA '95	13	253	1.6	9.6	21	144	2.5	10.5	18	151	2.2	9.7	13	148	1.6	8.4	6	77	.7	9.4
2-Book	15	273	1.8	10.3	21	168	2.5	11.7	21	171	2.5	10.9	17	175	2.1	10.0	7	108	.9	9.2
SP '95	22	261	2.6	14.8	28	211	3.3	15.3	27	150	3.2	12.8	32	208	3.8	18.6	8	106	.9	10.3
FA '94	12	208	1.4	9.2	14	166	1.6	7.3	26	141	3.1	14.0	18	113	2.1	10.8	4	47	.5	6.8
SP '94	7	198	.8	4.6	5	113	.6	2.7	6	83	.7	3.2	7	102	.8	4.0	10	89	1.2	9.9

\* Station(s) not reported  
this survey.\* Listener estimates adjusted for  
reported broadcast schedule.+ Station(s) changed call  
letters - see Page 13.4-Book: Avg. of current and previous 3 surveys.  
2-Book: Avg. of most recent 2 surveys.

# Target Listener Trends

Target Listener Trends - Persons 18-34

Persons 18-34																				
Monday-Sunday 6AM-MID				Monday-Friday 6AM-10AM				Monday-Friday 10AM-3PM				Monday-Friday 3PM-7PM				Monday-Friday 7PM-MID				
AQH (00)	Cume (00)	AQH Rtg	AQH Shr	AQH (00)	Cume (00)	AQH Rtg	AQH Shr	AQH (00)	Cume (00)	AQH Rtg	AQH Shr	AQH (00)	Cume (00)	AQH Rtg	AQH Shr	AQH (00)	Cume (00)	AQH Rtg	AQH Shr	
KXTJ-FM																				
SP '96		4							4											
FA '95	**	**	**	**	**	**	**	**	**	**	**	**	**	**	**	**	**	**	**	
2-Book	**	**	**	**	**	**	**	**	**	**	**	**	**	**	**	**	**	**	**	
SP '95	**	**	**	**	**	**	**	**	**	**	**	**	**	**	**	**	**	**	**	
FA '94	**	**	**	**	**	**	**	**	**	**	**	**	**	**	**	**	**	**	**	
SP '94	**	**	**	**	**	**	**	**	**	**	**	**	**	**	**	**	**	**	**	
KYKZ-FM																				
SP '96	5	104	.6	3.4	6	60	7	3.9	6	43	.7	3.2	7	42	.8	3.8	3	29	.4	3.3
FA '95	4	123	.5	2.9	4	56	.5	2.0	4	64	.5	2.2	6	63	.7	3.9	3	39	.4	4.7
2-Book	5	114	.8	3.2	5	58	.8	3.0	5	54	.6	2.7	7	53	.8	3.9	3	34	.4	4.0
SP '95	3	99	.4	2.0	2	32	.2	1.1	4	65	.5	1.9	4	50	.5	2.3	21	15		
FA '94	3	67	.4	2.3	3	40	.4	1.6	2	40	.2	1.1	7	35	.8	4.2	15	20	.2	2.0
SP '94	2	67	.2	1.3	3	32	.4	1.6	3	34	.4	1.6	3	33	.4	1.7	2	20	.2	2.0
KZVA-FM																				
SP '96	12	140	1.4	8.3	8	72	1.0	5.2	11	81	1.3	5.8	13	84	1.6	7.1	10	67	1.2	11.1
FA '95	7	89	.8	5.1	4	52	.5	2.0	8	56	1.0	4.3	11	63	1.3	7.1	2	34	.2	3.1
2-Book	10	115	1.1	6.7	6	62	.8	3.6	10	69	1.2	5.1	12	74	1.5	7.1	6	51	.7	7.1
SP '95	6	65	.7	4.0	7	44	.8	3.8	6	30	.7	2.8	8	48	.9	4.7	7	19	.8	9.0
FA '94	**	**	**	**	**	**	**	**	**	**	**	**	**	**	**	**	**	**	**	**
SP '94	**	**	**	**	**	**	**	**	**	**	**	**	**	**	**	**	**	**	**	**
TOTALS																				
SP '96	145	791	17.4		155	681	18.7		190	645	22.9		183	670	22.0		90	546	10.8	
FA '95	136	811	16.4		200	707	24.1		186	657	22.4		155	720	18.7		64	478	7.7	
2-Book	141	801	16.8		178	694	21.4		188	651	22.7		169	695	20.4		77	512	9.3	
SP '95	149	807	17.6		183	721	21.6		211	656	24.9		172	716	20.3		78	502	9.2	
FA '94	131	813	15.4		191	745	22.5		186	681	21.9		167	719	19.7		59	433	6.9	
SP '94	151	830	17.7		188	723	22.0		189	674	22.1		174	724	20.4		101	583	11.8	

\*\* Station(s) not reported  
this survey.

\* Listener estimates adjusted for  
reported broadcast schedule.

+ Station(s) changed call  
letters - see Page 13.

4-Book: Avg. of current and previous 3 surveys.  
2-Book: Avg. of most recent 2 surveys.

# Ethnic Composition

Persons 12+													
Monday-Sunday 6AM-MID													
	AQH (00)	AQH %	AQH Rtg	Cume (00)	Cume %	Cume Rtg		AQH (00)	AQH %	AQH Rtg	Cume (00)	Cume %	Cume Rtg
<b>KAOK-AM</b>							<b>KAYD-FM</b>						
Total	5	100	.4	118	100	8.4	Total	1	100	.1	24	100	1.7
Black	1	19	.3	30	25	9.5	Black						
<b>KBIU-FM</b>							<b>KBBX-FM</b>						
Total	18	100	1.3	314	100	22.4	Total	1	100	.1	33	100	2.4
Black	2	10	.6	37	12	11.7	Black	1	96	.3	31	95	9.8
<b>KEZM-AM</b>							<b>KIOC-FM</b>						
Total	6	100	.4	69	100	4.9	Total	6	100	.4	133	100	9.5
Black	1	9	.3	8	12	2.5	Black		1		3	2	.9
<b>KHLA-FM</b>							<b>KJEF-AM</b>						
Total	20	100	1.4	344	100	24.6	Total		100		6	100	.4
Black	1	5	.3	19	5	6.0	Black						
<b>KKGB-FM</b>							<b>KJEF-FM</b>						
Total	19	100	1.4	194	100	13.9	Total	2	100	.1	37	100	2.6
Black	1	7	.3	3	2	.9	Black						
<b>KLCL-AM</b>							<b>KKMY-FM</b>						
Total	1	100	.1	36	100	2.6	Total	1	100	.1	46	100	3.3
Black		7		4	12	1.3	Black		9		2	4	.6
<b>KXZZ-AM</b>							<b>KLVI-AM</b>						
Total	10	100	.7	148	100	10.6	Total	3	100	.2	43	100	3.1
Black	9	97	2.8	139	94	43.8	Black						
<b>KYKZ-FM</b>							<b>KQXY-FM</b>						
Total	48	100	3.4	536	100	38.3	Total	2	100	.1	54	100	3.9
Black	1	2	.3	12	2	3.8	Black						
<b>KZYA-FM</b>							<b>KSMB-FM</b>						
Total	26	100	1.9	263	100	18.8	Total	1	100	.1	42	100	3.0
Black	20	80	6.3	222	84	70.0	Black		14		4	10	1.3
<b>KAJN-FM</b>							<b>KTFA-FM</b>						
Total	6	100	.4	88	100	6.3	Total	2	100	.1	41	100	2.9
Black	2	27	.6	21	24	6.6	Black		4		3	9	.9
<b>KALO-AM</b>													
Total	3	100	.2	48	100	3.4							
Black	2	94	.6	40	83	12.6							
							<b>TOTALS</b>						
							Total	201	100	14.4	1286	100	91.9
							Black	46	23	14.5	294	23	92.7

\* Listener estimates adjusted for reported broadcast schedule.

+ Station(s) changed call letters - see Page 13.

&amp; Both of the previous footnotes apply.

**ARBITRON**

### Population Estimates and Tabulated (In-Tab) Diaries by County

Estimated P12+						Estimated P12+					
Population	In-Tab	Area	County/ Split County	ST	HDA Blk. / Hisp.	Population	In-Tab	Area	County/ Split County	ST	HDA Blk. / Hisp.
139,900	581	MT	CALCASIEU	LA	B	25,000	17	T	JEFFERSON DAVIS	LA	
19,300	25	T	ALLEN	LA		42,200	51	T	VERNON	LA	
25,500	18	T	BEAUREGARD	LA		26,800	45	T	JASPER	TX	
6,900	27	T	CAMERON	LA		11,400	30	T	NEWTON	TX	

M - Metro County T - TSA County D - DMA County

HDA - High-Density Area  
(Black or Hispanic)REM - Remainder portion of geographic split county (generally  
nonmetropolitan according to the federal government's  
Office of Management and Budget (OMB))

#### High-Density Area

Black/Hispanic

Combined	Total		Ethnic	
	In-Tab	Est. Pop. 12+	In-Tab	Est. Pop. 12+
HDBA	142	36,600	73	21,100
HDHA				

These population estimates are based on 1990 Census data, updated and projected to January 1, 1996, by Market Statistics, producers of the *Survey of Buying Power*, a division of Bill Communications. (See "Special Notices and Station Activities" on Page 13 of this report for other relevant information.)

For total Metro in-tab counts for applicable ethnic groups, see Page 4 or 13.

## ***KZWA-FM 105.3***

### ***Station Profile***

- \* *KZWA-FM is a "combo market" regional radio station , effectively serving two(2) markets, in two states.*
- \* *With 50,000 watts of power, 24 hours, 7 days a week, KZWA'S coverage area includes S. W. Louisiana and S. E. Texas(Orange, Beaumont, and Port Arthur, Texas, and Lake Charles, La.*
- \* *Signal covers 110 miles of Interstate-10. Approximately one hour and a half of the time spent listening.*
- \* *KZWA is an Urban Adult-Contemporary, whose format targets adults 18-54 years old.*
- \* *KZWA plays a unique blend of crossover hits from the 60's, 70's, 80's and 90's.*
- \* *KZWA'S audience has the region's highest crossover demo ratio: 80/20!*
- \* *Arbitron's spring '96 ratings, ranks KZWA-FM 105.3, as the #1 favorite station with adults 18-34, #2 with adults 18-49.*
- \* *KZWA-FM 105.3 is the "Best Buy" station for two T.S.A.'s, Beaumont-Port Arthur, Texas and Lake Charles, Louisiana.*
- \* *It cost an advertiser more ... (in lost profits and sales) not to advertise on KZWA, than it would to advertise on KZWA.*

## Ethnic Population Estimates

Metro Ethnic Populations are reported for all Standard and Condensed Markets whether or not ethnic sampling procedures are in place (see Page 4). The Percent Total Black and Hispanic Populations are based on Black and Hispanic Populations Persons 12+. The Percent Total Demographic is based on total Metro Demographics on Page 4. Ethnic Population information is based on the 1990 Census, updated by Market Statistics to 1/1/96. For more information on ethnic populations, see Page 13 (for ethnically controlled metros only).

Population Estimates	Total Black	% Total Black Pop.	% Total Demographic	Total Hispanic	% Total Hispanic Pop.	% Total Demographic
<b>Persons 12+</b>	31,700	100.0	22.7	1,500	100.0	1.1
<b>Teens 12-17</b>	4,600	14.5	27.7	200	13.3	1.2
<b>Men</b>						
18-24	1,900	6.0	24.4	100	6.7	1.3
25-34	2,900	9.1	23.0	200	13.3	1.6
35-44	2,900	9.1	21.8	100	6.7	.8
45-49	1,000	3.2	17.9	100	6.7	1.8
50-54	900	2.8	19.6	0	.0	.0
55-64	1,400	4.4	20.0	100	6.7	1.4
65+	1,400	4.4	17.7	0	.0	.0
<b>Women</b>						
18-24	2,000	6.3	26.0	100	6.7	1.3
25-34	3,400	10.7	26.0	200	13.3	1.5
35-44	3,400	10.7	24.8	200	13.3	1.5
45-49	1,200	3.8	20.0	0	.0	.0
50-54	1,000	3.2	20.4	100	6.7	2.0
55-64	1,700	5.4	21.5	0	.0	.0
65+	2,000	6.3	17.9	100	6.7	.9

## Area Lifestyle Profile

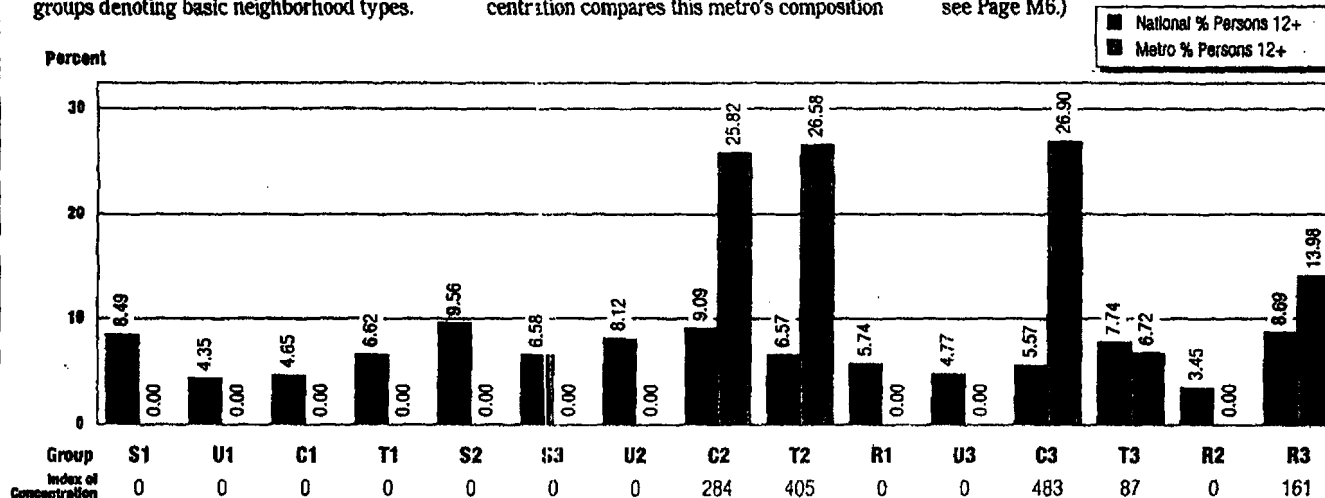
by PRIZM® Groups

PRIZM is a market segmentation system developed by Claritas, Inc. to help marketers target consumers, and to profile markets and audiences by lifestyle. There are 62 PRIZM clusters which are organized into 15 broader social groups denoting basic neighborhood types.

The 15 PRIZM social groups are identified by codes that are listed below this chart.

In this chart, the national composition and this metro's composition for each PRIZM group are shown for Persons 12+. The Index of Concentration compares this metro's composition

with the national composition for each PRIZM group. An index of 100 indicates that the market has the same percent concentration as the nation. (For more information about PRIZM and Claritas, Inc., see Page M6.)



## PRIZM® Groups

**S1** Elite Suburbs - superrich, executive, upscale white-collar couples, empty-nesters

**U1** Urban Uptown - elite, upscale, bohemian singles & couples; established immigrant families

**C1** 2nd City Society - upscale executive & young upscale white-collar; affluent retirees

**T1** Landed Gentry - elite exurban, small-town executive & young, mid-class town families

**S2** The Affluentials - upwardly mobile young singles & couples; white-collar suburban families

**S3** Inner Suburbs - empty-nesters, mobile city singles, blue-collar families & aging couples

**U2** Urban Midscale - white-collar urb. couples; mid-income imm. gr.; African-American & Hispanic families

**C2** 2nd City Centers - mid-level, white-collar couples; mid-income families & college town singles

**T2** Exurban Blues - yng. mid-class, blue-collar families in mid-size towns; GI families

**R1** Country Families - midscale couples, rural, white/blue-collar; kids, farm families

**U3** Urban Cores - ethnically mixed singles; Hsp. sncls. & families; inner-city solo-parent families

**C3** 2nd City Blues - low-inc. older sncls., cpls. & fam.; low-inc. Hsp. fam.; Afr.-Am. service wrkr.

**T3** Working Towns - older families; mill towns, low-inc. blue-collar, town seniors

**R2** Heartlanders - rural farm town & ranch families, farm dwellers & tenants

**R3** Rustic Living - moderate blue-collar farm fam.; low-inc. older cpls., remote older families



Notations

# ARBITRON LAKE CHARLES, LA. Spring '96 Book

- 1) Population Est.
- 2) Ethnic Population Est.
- 3) Ethnic Composition (80% of ~~ARB.~~ KZWA Listeners ARE Black).
- 4) ~~Arbitron~~ 18-34 Ratings KZWA-Is #1
- 5) 18-49 Ratings
- 6) 25-54 Ratings.
- 7) Lake Charles Overall Strengths
- 8) BEAUMONT-PORT ARTHUR Strengths.
- 9) TEXAS 18-34 Ratings.

EXHIBIT B

Before the  
Federal Communications Commission  
Washington, D.C. 20554

MM Docket No. 88-358

In re Applications of

TEXAS  
COMMUNICATIONS  
LIMITED PARTNERSHIP

File No. BPH-870710MI

BEAUMONT  
SKYWAVE, INC.

File No. BPH-870710NA

CHM BROADCASTING

File No. BPH-870710NC

For a Construction Permit for a New  
FM Station on Channel 273C2  
Beaumont, Texas

#### Appearances

Thomas L. Siebert, Stephen Diaz Gavin, and J. Jeffrey Craven on behalf of Texas Communications Limited Partnership; Donald J. Evans and Peter D. Shields on behalf of Beaumont Skywave, Inc.; Eric L. Bernthal, Everett C. Johnson, Jr., and Carol Ann Siciliano on behalf of CHM Broadcasting; and Y. Paulette Laden on behalf of the Mass Media Bureau.

#### INITIAL DECISION OF ADMINISTRATIVE LAW JUDGE EDWARD J. KUHLMANN

Issued: March 5, 1990;

Released: March 14, 1990

1. The three applications listed in the caption and two additional applications, now dismissed, were designated for hearing on August 8, 1988, to consider on a comparative basis which mutually exclusive proposal would best serve the public interest. *Hearing Designation Order*, 3 FCC Rcd 4768 (1988). The following issues will be considered in this decision:

1. To determine whether there is a reasonable possibility that the tower height and location proposed by Texas Ltd. and CHM would constitute a hazard to air navigation.
2. (1) To determine whether CHM misrepresented in its application that it was financially qualified to construct and operate the proposed Beaumont, Texas FM station and whether those facts warrant CHM Broadcasting's disqualification.  
(2) To determine whether CHM is financially qualified.
3. To determine which of the proposals would, on a comparative basis, best serve the public interest.

4. To determine, in light of the evidence adduced pursuant to the foregoing issues, which of the applications should be granted, if any.

2. A prehearing conference was held on October 14, 1988. *Order*, FCC 88M-2612 released August 12, 1988; Tr. 1-13. Written testimony was exchanged on April 17, 1989 and September 8, 1989. Hearing sessions to cross-examine on the written testimony were held in 1989 on May 1 (Tr. 15-272/279), May 2 (Tr. 280-561/599), and May 3 (Tr. 600-775) and September 21 (Tr. 776-1006), September 22 (Tr. 1007-1122), and September 25 (Tr. 1123-1322). The hearing record was initially closed on May 3, 1989 (*Order*, FCC 89M-1362, released May 5, 1989) and finally on September 25, 1989. *Order*, FCC 89M-2353, released September 27, 1989.

#### FINDINGS OF FACT

**Issue 1: To determine the possibility of whether the tower height and location proposed by Texas, Ltd. and CHM would constitute a hazard to air navigation.**

Texas, Ltd.

3. Texas, Ltd. learned in 1987, through its engineers, Sachs-Freeman, that the FAA had preliminarily determined that Texas, Ltd.'s proposed tower site would be a hazard to air navigation. Tr. 62, 66-67. Sachs-Freeman represented Texas, Ltd. in all its dealings with the FAA and, in its application to the FAA, Texas, Ltd. had advised the FAA to communicate with Sachs-Freeman directly. Tr. 63. According to Andre Woodson, Texas, Ltd.'s general partner, Sachs-Freeman never advised him or the applicant's legal counsel about the FAA's decision. Tr. 62. Mr. Woodson conceded that the applicant's engineering firm had not been diligent in resolving Texas, Ltd.'s tower problem. Tr. 65. Mr. Woodson testified that his engineers may have been informed about the problem with the site in September 1987, just two months after Texas, Ltd. filed its application. Tr. 63. Mr. Woodson did not call the engineers to inquire about the FAA's consideration of Texas, Ltd.'s site proposal. Tr. 66. In August 1988, he discovered from the HDO in this case that an air hazard issue had been designated against Texas, Ltd. Tr. 63. Thirteen months after filing, Mr. Woodson and Texas, Ltd.'s attorneys decided to hire another engineering firm. Tr. 65-66.

4. Mr. Woodson was aware that the site Texas, Ltd. had designated was the same as that of Ronald Mathis, one of the original applicants. Tr. 71. He also knew that Mr. Mathis amended his application to designate a new site because the FAA had found that the site posed a hazard to air navigation. Tr. 74. He was aware that he was "in the same situation." Tr. 74. He also saw Mathis' amendment and the opposition to it, which was filed in September 1988. Tr. 76. While Mr. Woodson failed to provide specific dates or the general time when he became aware of Mathis' proposal to change sites, Texas, Ltd.'s counsel learned about the FAA's decision in August 1988. Tr. 62.

5. Mr. Woodson testified that Texas, Ltd.'s petition for leave to amend to change sites was filed around September 1988. Tr. 78. Actually, it was filed, bearing Mr. Woodson's signature, two weeks before the hearing, on

April 19, proposal i could not months (f site design Texas, Ltd. from the l site would also tha intermodi tower's pr also advis ation of t of the two

CHM

6. CHM its tower. signal m learned al it receiver 550. CHM the stand would be because it Tr. 554, prelimina not affect operations Skywave conduct a 555-56. T that the t the FAA electroma hazard det

7. On telecopy, sued by i confirmed The tower but it we rule route intermodi junction 2-3. The would po advised C deration relocation 3.

Skywa

8. Skyv day after the deter Skywave, by Skyw FCC 89M found th 12 feet ai

April 19, 1989. Skywave Exh. 6. Texas, Ltd.'s new site proposal is for the site selected by Skywave. Mr. Woodson could not explain why Texas, Ltd. waited nearly eight months (from August 1988 to April 1989) to change to a site designated by Skywave. Tr. 85. On May 10, 1989, Texas, Ltd. received a Notice of Hazard Determination from the FAA, advising Texas Ltd. that a tower on its new site would exceed FAA height limitations by nine feet and also that it would cause an electromagnetic intermodulation interference problem because of the tower's proximity to two other broadcast towers. The FAA also advised Texas, Ltd. that it might request reconsideration of the determination upon the relocation of either of the two towers.

#### CHM

6. CHM has been unable to obtain FAA clearance for its tower. Its proposed tower height is excessive and its signal may cause electromagnetic interference. CHM learned about the air hazard problems with its site when it received a document from the FAA in July 1988. Tr. 550. CHM was informed that its proposed site exceeded the standards of part 77 of the FAA regulations and would be identified as an obstruction to air navigation because its height exceeded 500 feet above ground level. Tr. 554, 555. But the FAA also advised CHM that a preliminary study indicated that CHM's proposal would not affect any existing or planned instrument flight rule operations, procedures or minimum flight altitudes. Skywave Exh. 8, at 2. CHM requested that the FAA conduct a further study of its tower proposal. Tr. 554-55, 555-56. The FAA orally advised CHM, through counsel, that the tower's height would not be a problem but that the FAA had identified a new problem associated with electromagnetic interference that would preclude a no hazard determination. Tr. 606-07, 607-08, 693.

7. On April 26, 1989, counsel for CHM received, by telecopy, a determination of hazard to air navigation issued by the FAA. Skywave Exh. 9. The determination confirmed what the FAA had earlier told CHM's counsel. The tower would penetrate reserved air space by 15 feet, but it would not be in a regularly utilized visual flight rule route. *Id.*, at 2. The FAA found that three-frequency intermodulation interference would be caused by the conjunction of CHM's tower and two existing towers. *Id.*, at 2-3. The FAA determined that the proposed construction would pose an air safety hazard. *Id.*, at 2. The FAA advised CHM that it could petition the FAA for reconsideration of this hazard determination immediately upon relocation of either of the two interfering stations. *Id.*, at 3.

#### Skywave

8. Skywave amended its application on May 4, 1989, the day after the hearing, to report that the FAA had reversed the determination of no hazard it had previously made to Skywave. Petition for Leave to Amend, filed May 4, 1989 by Skywave (*granted, Memorandum Opinion and Order*, FCC 89M-1985, released July 28, 1989, at 6.). The FAA found that Skywave would penetrate reserved air space by 12 feet and cause electromagnetic interference.

Issue 2: To determine whether CHM misrepresented that it was financially qualified when it filed its application and whether CHM is financially qualified.

#### CHM's Financial Certification

##### Cost Estimates

9. CHM general partner, Joseph Mims, prepared a budget for the FM station at Beaumont, which he shared with all of his partners. Tr. 1010; CHM Financial Exh. 1A. The CHM partners reviewed and discussed Mr. Mims' budget at a meeting held in June 1987. Tr. 960. During a July 1987 trip to Washington, D.C., the budget was officially adopted by CHM partners as the budget for the station. Tr. 961-62; CHM Financial Exh. 4, at 2. It was adopted, however, with the understanding that it did not necessarily reflect CHM's proposal because Mr. Mims had made up the budget for a station he planned for Beaumont before CHM was formed. Tr. 962. For example, Amelie Cobb pointed out that no provision had been made in the budget for salaries for her and Ms. Hatcher. Tr. 963. No provision was made in the budget for the repayment of the already \$200,000 in loans made "on commercially reasonable terms" by Kent Foster to the partnership. Texas, Ltd. Exh. 9; Tr. 1227, 1014. Nevertheless, Beverly Hatcher, who certified CHM's financial qualifications, stated that she believed that Mr. Mims' estimates were valid for CHM's proposal and she relied on those estimates. Tr. 1070.

10. CHM's budget (CHM Financial Exh. 1A) estimates start-up expenses for construction to be \$335,000 and operating expenses to be \$49,062 per month. When Ms. Hatcher testified, she indicated that it was intended that the applicant would provide about \$150,000 for construction and the rest would be in the form of a loan from the equipment vendor, a bank, or the limited partner, Kent Foster. Tr. 1065-66, 1072, 1073, 1120. Amelie Cobb testified that the applicant would need \$350,000 and that amount would come from a bank loan. Tr. 972. Joseph Mims claimed that the plan was to use \$150,000 to \$200,000 of the \$350,000 loan for operating expenses in the first three months. Tr. 1051. Mr. Mims told Mr. Crouch, Chairman of the Board at the East Texas State Bank, where he and Mr. Foster requested a loan letter, that it would cost \$535,000 to construct and operate for one year. Tr. 1023.

##### Reasonable Assurance of Availability of Funds

11. When CHM certified its financial qualifications, it relied on a soon to be issued letter from the East Texas State Bank for \$350,000. Tr. 1095, 1118; CHM Financial Exh. 2, at 7; CHM Financial Exh. 1C. Kent Foster, CHM's limited partner, had also promised to provide the construction and operation costs which could total \$500,000 or more, CHM believed. Tr. 1039-40, 1074, 1075, 1084; CHM Financial Exh. 1, at 8; CHM Financial Exh. 2 at 3; CHM Exh. 3, at 3-4; CHM Financial Exh. 4, at 2.

12. Kent Foster and Joseph Mims obtained the loan assurance letter from the East Texas State Bank and showed it to Beverly Hatcher some time after she had certified CHM's application. Tr. 1077-79. Mr. Foster and Mr. Mims met with the Chairman of the Board of the East Texas State Bank, Raymond Crouch, who is Mr.

Foster's brother-in-law, in late June or early July 1987, before CHM filed its application. CHM Financial Exh. 1, at 8-9; CHM Financial Exh. 4, at 5. Mr. Mims represents that he told Mr. Crouch that the applicant intended to buy its equipment on time. (Tr. 1023, 1065) and he explained to him that the bank would not have a first security interest in the equipment. Tr. 1065. Because Mr. Foster promised to pledge his personal assets, Mr. Crouch recommended that the request be granted. Tr. 861-62. He presented his recommendation to the bank's board immediately following his meeting with Messrs. Mims and Foster.

13. Mr. Crouch based his assessment of Mr. Foster's pledge on Mr. Foster's December 31, 1985 financial statement and a credit report. Tr. 850, 855-56. He also considered the joint financial statement of Amelie Cobb and her spouse that was in the bank's files. Tr. 857-58, and took note of Mr. Mims' radio experience. Tr. 859. The loan committee approved the request and Mr. Crouch immediately advised Mr. Foster and Mr. Mims. Tr. 878. In October 1988, Mr. Foster obtained another letter from the East Texas State Bank, which acknowledged that the bank had issued letters of assurance for CHM and three other entities in which Mr. Foster was a limited partner. Tr. 1153-54; CHM Financial Exh. 9B; CHM Financial Exh. 4, at 11-12.

14. Even though he would not have done so ordinarily, Mr. Crouch consulted the loan committee about the initial Bank letter to CHM because Mr. Foster was a 1.6% shareholder and director of the bank and also voted 82% of the bank's stock by proxy. Tr. 866-67. The letter was shown to the bank's attorney for his review and approval. Tr. 864-65. In the letter the bank expresses a willingness "to consider" the loan. CHM Financial Exh. 1C. The bank specifically stated that the letter did not represent a contractual commitment and it was not binding on the bank. *Id.* The bank did state that it was its "intention and desire to make the loan on the terms named." *Id.*

15. Two months following the issuance of the July 7, 1987 letter to CHM by the East Texas State Bank, the bank received an unfavorable examination by the bank's inspectors. Mr. Foster claims he did not know that the bank was having financial difficulty until August 1988. Tr. 1141-43. There is evidence that Mr. Foster's mother and sister were aware of the difficulties a year earlier. Tr. 870, 872-73. Mr. Foster did not tell the CHM owners that the bank had failed until it officially failed in November 1988. None of CHM's partners asked the successor bank about the status of the loan letter from East Texas State Bank. Tr. 986, 1105. A new letter was not obtained until March 1989. That letter, from the National Bank of Washington, was also for \$350,000. CHM Financial Exh. 4, at 14; CHM Financial Exh. 4A. Mr. Foster showed National Bank of Washington a December 31, 1988 financial statement, Tr. 1203, and his Treasury certificates, worth one million dollars, and indicated that he had several hundred thousand dollars in certificates of deposit. CHM Financial Exh. 4, at 13.

16. Mr. Foster also promised CHM to provide the necessary money. He discussed with Ms. Hatcher, Mr. Mims, and Ms. Cobb his investments and assets, including his cellular telephone interests and his certificates of deposit, although he did not indicate how much money he had in CDs. CHM Financial Exh. 4, at 3; Tr. 1036, 1037, 1040. Ms. Cobb believed that Mr. Foster was wealthy and she told Mr. Mims and Ms. Hatcher about her perception. Tr.

1090; CHM Financial Exh. 1, at 2; CHM Financial Exh. 3, at 4. Ms. Hatcher believed that the East Texas State Bank letter demonstrated that the bank believed Mr. Foster was a good credit risk and that his assets were liquid. Tr. 1085-86. CHM Financial Exh. 1, at 7. CHM Financial Exh. 2, at 4. At the time Mr. Foster made his promise to provide CHM with \$350,000, he had \$550,000 in cash, securities, and certificates of deposit and a note payable to East Texas State Bank for \$301,184. CHM Financial Exh. 4B. Mr. Foster also claimed at the hearing that in July 1987 he had real estate interests that could realize \$1,225,000 within 30 days. CHM Financial Exh. 6, at 2-3. When CHM filed its application on July 1, 1987, Mr. Foster was obligated to provide \$1 million to other broadcast applicants. CHM Financial Exh. 4E. In November 1988, when the bank became insolvent, Mr. Foster had liquid assets of approximately \$1 million. CHM Financial Exh. 4C. In March and September, 1989, he had approximately the same amount and a net worth in excess of \$10 million. CHM Financial Exh. 4D; CHM Financial Exh. 4, at 17. Mr. Foster testified that he is willing to borrow against or liquidate his assets to meet his obligations. CHM Financial Exh. 4, at 18. Mr. Foster claims he has always had enough liquid assets to meet his obligations. *Id.*

17. Mr. Foster has obligations to his various broadcast applications in excess of four and one-half million dollars. CHM Financial Exh. 4F. Mr. Foster's March 1989 financial statement, CHM Financial Exh. 4D, shows \$1,358,500 in liquid assets. He submitted appraisals for non-liquid assets of \$1,632,000, which includes \$407,000 in art work. *Id.*

18. Ms. Hatcher testified that she was relying on the bank's letter and Mr. Foster's commitment when she certified. Tr. 1075. She stated that she was not relying on equipment vendors. Tr. 1076. And she said there had been no discussion about equipment vendor financing at the time she certified. Tr. 1076. Ms. Hatcher relied on Mr. Mims' estimates as being the costs for the station. Tr. 1070. She did not see the bank letter before she certified and knew nothing about its details except for the amount. Tr. 1079, 1080, 1081. In her view, the bank substantiated Mr. Foster's reliability. Tr. 1083. In her mind, she never intended to borrow the money from East Texas State Bank. Tr. 1084. While Ms. Hatcher was familiar with the Form 301 instructions, she admitted that she never asked Mr. Foster for a balance sheet. Tr. 1091. She had no knowledge of Mr. Foster's liabilities, except that he had commitments in the millions of dollars to other broadcast applications. Tr. 1114-15. She believes she substantiated Mr. Foster's liquid assets by being told by Mr. Mims that "everything was okay with the bank." Tr. 1084. She did ask a friend, Arthur Craft, to check out Mr. Foster. Tr. 1085. But Mr. Craft is not a personal friend of Mr. Foster and he does not have personal knowledge of Mr. Foster's financial interests. *Jt. Stipulations*, received September 19, 1989. She knew that neither Mr. Craft nor Ms. Cobb, her other source of information about Mr. Foster, knew how much money Mr. Foster had. Tr. 1093.

19. Currently CHM also relies on a letter from the National Bank of Washington, which is dated March 22, 1989 and gives assurance of a loan for \$350,000. CHM Financial Exh. 4A. Mr. Foster continues to promise to lend the estimated construction and operation costs. Tr. 1039-40, 1084; Texas, Ltd. Exh. 10, at 8.

# Kent Foster's Reliability

20. Rita Capobianchi, a former business associate of Kent Foster, testified that when Mr. Foster was asked to provide the money he promised in their business ventures, he would not. Tr. 1272. In November 1985, Ms. Capobianchi and Mr. Foster formed Americell, Inc., which filed 150 MSA cellular applications. Tr. 1256. They owned equal shares. Mr. Foster was obligated to provide all the financing for the construction and operation of the systems. Tr. 1257. Mr. Foster did not show Ms. Capobianchi a balance sheet but he did tell her about his paintings, race horses, and cellular interests. Tr. 1258-59. She decided from his descriptions that he could supply the money. Tr. 1259-60.

21. When Americell was selected by lottery, Mr. Foster said they would rely on equipment vendor financing. Tr. 1261. On two occasions, Mr. Foster refused to provide money he was apparently obligated to provide. Tr. 1266, 1268, 1270. Ms. Capobianchi claims that, because Mr. Foster failed to fulfill his obligations, Americell was forced to sell its authorization instead of constructing and operating the system. Tr. 1272. Ms. Capobianchi also told Mr. Foster that she believed it was in the company's "best interests" to sell out. Tr. 1318.

22. Ms. Capobianchi conceded that Mr. Foster did arrange for financing of company expenses through an equipment vendor, Tr. 1299, 1300, 1306, and he made his required capital contribution. Tr. 1285. He also paid the company's engineering bill. Tr. 1291. Ms. Capobianchi testified that she believed Mr. Foster could personally provide \$150 million to fund her successful applications. Tr. 1297.

23. Kent Foster is the 100% owner of Global Land Mobile Satellite which was an applicant for a land mobile satellite system. Tr. 1187. Mr. Foster estimated that the proposed system would cost \$442 million to operate. Tr. 1187-88. Each of the applicants was required to show that they had \$5 million in cash or the immediate availability of the money. Mr. Foster's company submitted a letter in accordance with the Commission's order, including the required certification. Tr. 1188; Skywave Exh. 22, at 2, ¶ 9. When the Commission required that the money be deposited in an escrow account, Global did not do so. Tr. 1193. Global's application was dismissed. Tr. 1193. Mr. Foster appears to claim that he changed his mind. Tr. 1193.

## Issue 3: Comparison of the applicants Full-time participation in station operation by owners

### Texas, Ltd.

24. Texas, Ltd. has six owners, four limited partners who own 15% of the partnership, Hubert B. Payne, Darrell A. Fields, Dominic L. Ozanne, Val C. King, and Joseph C. Hewitt, and one general partner, Andre Woodson, who owns 25% of the partnership. Texas, Ltd. Exh. 1. Mr. Woodson has promised to work full time, 40 hours per week, as the proposed station's general manager. Texas, Ltd. Exh. 3, at 1. Mr. Woodson's responsibilities will include overseeing program production; purchasing equipment, services and programming; and developing station news and editorial policies. *Id.* He will

also hire and supervise all station management personnel and will be responsible for the administration and implementation of the station's EEO program. *Id.*, at 1-2.

25. Mr. Woodson is an African American. Texas, Ltd. Exh. 3, at 2. He is not a local resident but he will move to Beaumont, Texas, Ltd. Exh. 5, at 3. Mr. Woodson has worked at broadcast stations since October 1973. Texas, Ltd. Exh. 3, at 1-2. From 1973 to May 1977, he worked part-time at two stations. *Id.* Since August 1977, he has worked full time at two television stations. *Id.*, at 2. He currently is national sales manager at WDAF-TV, Dallas, Texas. *Id.*, at 2.

26. Mr. Woodson was contacted by Hubert Payne about filing a broadcast application. Tr. 104-05. Mr. Payne told him about where allocations were available. Tr. 105, 164-65. Mr. Payne also told Mr. Woodson that he would arrange for the other partners. Tr. 119. Mr. Woodson and Mr. Payne agreed that Mr. Woodson would be the general partner and the limited partners would provide the necessary capital. Tr. 107. Mr. Woodson agreed to Mr. Payne's selection of limited partners. Tr. 120. Prior to agreeing to form the partnership, Mr. Woodson met only Mr. Payne and Val King. Tr. 119. After he decided to enter into a partnership agreement, Mr. Woodson did discuss with Mr. Payne the background of the three other limited partners. Tr. 127-28. Mr. Woodson met Mr. Payne and Mr. King at a trade seminar two years before filing the application. Tr. 119. When he was approached about the application, it was done by telephone. He did not meet with any of the limited partners while the application was being prepared. *Id.*

27. Mr. Woodson claims he hired the applicant's law firm and engineer and reviewed the engineering in the application but he could not recall details about hiring the applicant's law firm. Tr. 108-09, speaking to engineers. Tr. 94, or reviewing engineering to the application. Tr. 95-96. Sachs-Freeman, Texas, Ltd.'s engineering firm, began preparing the engineering before Mr. Woodson became involved and obtained the antenna site before it was hired. Tr. 153-55. While the Texas, Ltd. partnership agreement precludes the limited partners from being involved in media activities of the partnership, the limited partners, in a series of telephone conference calls, participated in deciding where and how to obtain a financial commitment letter. The letter itself was obtained by Dominic Ozanne, one of the limited partners. Tr. 143-44. The limited partnership agreement was one the limited partners used in other proceedings. Tr. 114. The limited partners also selected the applicant's law firm. Tr. 101-02, 109-10. The firm was not hired until the week the application was filed. Tr. 108-09. Texas, Ltd.'s law firm recommended the applicant's engineer and informed Mr. Woodson about the bills that needed to be paid. Tr. 87, 91-92, 93. Mr. Woodson said that the partnership agreement provides that he direct the partnership and the limited partners will supply the capital. Tr. 126. He stated that the partnership agreement bound the limited partners to finance the application and the construction and operation of the station. Tr. 129-30. The partnership agreement, however, provides that the limited partners are obligated only for their capital contributions, \$750.00 each, and additional contributions are made only if they consent to do so. Texas, Ltd. Exh. 6, at 3, 19. Nevertheless, the limited partners determined how the financing will be

accomplished. Tr. 145. Mr. Woodson relied on the limited partners' track record of raising capital for other ventures. Tr. 131.

### Skywave

28. Skywave has one voting stockholder, Alice Felix Ramsey, who owns 100% of the voting stock and 25% of the equity. Skywave Exh. 1. She is the president, secretary, treasurer and a director of the corporation. *Id.* Daniel E. Ramsey is the only other officer; he is a director and assistant secretary and assistant treasurer. *Id.* Skywave Communications Corporation owns all nonvoting stock and 75% of the equity. *Id.*

29. Alice Ramsey proposes to work full time, 40 hours per week, at the station as the general manager. Skywave Exh. 2, at 4. She will be responsible for the day-to-day supervision of all aspects of the management of the station. *Id.* Ms. Ramsey is African American, female, and has lived in Beaumont for forty years. Skywave Exh. 2, at 1, 4. Ms. Ramsey has been active in local civic activities. From 1969 to 1987, she was a member of the Citizens Action Committee, an organization to further equality for African Americans in Beaumont. *Id.* at 1. She also worked with the Black Adoption Council (1984), the Southeast Texas Sickle-Cell Anemia Foundation (Board of Directors, 1985-86) and the NAACP (1980 to present). In 1987 Ms. Ramsey received an award for her work with the NAACP. In 1978, Ms. Ramsey helped found the Opportunities Industrialization Center of the Southeast, Inc., an organization that assists high school dropouts and unemployed persons over the age of fifty in obtaining skills necessary to successfully enter the workforce. *Id.* at 2. She is also a member of the Beaumont Chapter of Top Ladies of Distinction, Inc. She has been an officer and board member of both the Industrialization Center and Top Ladies of Distinction. She has belonged to a number of other local civic organizations including the Governor's Education Council. *Id.* at 3.

30. Ms. Ramsey began working in broadcasting in 1972 when she worked as an announcer and sales representative at KLVJ/KPBO (AM-FM) and from 1973 to 1978 she was a news reporter and part-time anchor person for a local television station KBMT(TV). From 1984 to the present, Ms. Ramsey has produced and been the host of "Interaction," a local public affairs program broadcast by KBMT. *Id.* at 4.

31. Ms. Ramsey was approached by Leon Perkinson, the president, director and single largest shareholder of SCC. Thomas Jones, who was a partner in McFadden, Evans & Sill, the communications law firm that represents Mr. Perkinson in his communications interests, introduced Leon Perkinson to Ms. Ramsey. Tr. 178, 480; Skywave Exh. 5, at 1. While Mr. Perkinson and Ms. Ramsey agreed that she would have 100% of the voting control, Ms. Ramsey said there was no particular reason for her having all the voting control. Tr. 190-91. Mr. Perkinson gave Ms. Ramsey a list of questions that would be asked of her during the hearing and told her that her participation would forward Commission policy objectives. CHM Exh. 11, at 1; Tr. 451-52. He also supplied Ms. Ramsey with information about construction costs and operating expenses. CHM Exh. 11, at 1; Tr. 235. Mr. Perkinson told Ms. Ramsey that she would be expected to know about

such matters in order to pursue the application. CHM Exh. 11, at 1. He offered to provide whatever help she requested. CHM Exh. 11, at 1; Tr. 457.

32. Mr. Perkinson suggested, and Ms. Ramsey agreed, that Skywave be incorporated in Indiana where he lived and to hire Phillip Kappes, an Indiana corporate attorney who had been Mr. Perkinson's lawyer for 25 years. Tr. 318, 319, 446. Mr. Kappes is corporate attorney for several of SCC's applications. Tr. 446-47. Mr. Perkinson also selected McFadden, Evans & Sill, the firm that represents all other SCC applications. Tr. 265, 480. Ms. Ramsey did not meet with the firm prior to retaining it. Tr. 244. Her local attorney contacted the firm. Tr. 243. Douglas McFadden, a partner in Skywave's law firm, is a 3% owner of SCC; he has owned as much as 5% of SCC. Tr. 476. Mr. Kappes, who owns approximately 10% of SCC's stock, is the third or fourth largest shareholder of SCC. Tr. 449. McFadden, Evans & Sill and Mr. Kappes have provided legal services to Skywave throughout the application process. Tr. 243.

33. Mr. Perkinson chose Skywave's engineering firm, Communications Engineering Services. Tr. 265. CES was hired by SCC to perform an assessment of the Beaumont market before Mr. Perkinson met with Ms. Ramsey. Tr. 460-61. CES has performed similar services for SCC in other markets. Tr. 480. Mr. Perkinson also recommended Skywave's resident agent in Indiana, contacted a bank for financing, guaranteed loans to Skywave and introduced Ms. Ramsey to a bank in Indianapolis. Tr. 303, 305, 306. He has paid some bills for the applicant directly. Tr. 196, 471; CHM Exh. 14. Mr. Perkinson has the right to stop financing the venture. Tr. 310-11. SCC has the option to require Skywave to purchase its preferred stock at fair market value or convert the shares to common or voting stock on May 1, 1993. Texas, Ltd. Exh. 8, at 2-3; Skywave Exh. 5, at 3; Tr. 185, 189, 329. That provision was suggested by Mr. Perkinson (Tr. 187) and provided in the articles of incorporation which were given to Ms. Ramsey by Phillip Kappes. Tr. 271. Ms. Ramsey accepted the provision without making any change. Tr. 188. Ms. Ramsey owns one share of voting stock and SCC owns three shares of nonvoting stock. If the stock is converted, SCC would have three votes and Ms. Ramsey one. Tr. 189, 330. The articles also reserve to Ms. Ramsey and SCC preemptive rights to purchase stock to maintain their percentage of ownership when new stock is issued. Texas, Ltd. Exh. 8, at 3; Tr. 338.

34. The principal office of Skywave is listed in its articles as being in Indianapolis (Texas, Ltd. Exh. 8, at 1; Tr. 327-28) but Ms. Ramsey said she believes it is in her home in Beaumont. Tr. 327-28. Any shareholder may amend, alter or repeal the bylaws. Texas, Ltd. Exh. 8, at 5; Tr. 330. On April 17, 1989, Skywave amended its application to change the number of shares Ms. Ramsey owned from 400 to 1. Ms. Ramsey said that this change did not alter her equity percentage. Tr. 332. She explained, "I understand the 400 shares to mean the one share, its one in three, okay, and if you take 1,000, 400 is 25 percent and the 600 is preferred shares, that's how I understand it to mean. I could be all wrong." Tr. 333.

35. Ms. Ramsey's spouse, Daniel, is a director, vice president, assistant secretary and assistant treasurer of Skywave. Tr. 198-99, 204, 208, 210. Skywave has reported his interests to Indiana and Texas. Tr. 198-99, 201. Ms. Ramsey, when questioned, first denied and then conceded her spouse's interest. Tr. 299, 304. Mr. Ramsey's interest

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was not included in Skywave's direct testimony where the corporation's owners, officers, and directors were listed. Skywave Exh. 1; Tr. 199. Mr. Ramsey has performed the duties of an officer and he believes he is an officer. Tr. 199, 370, 376. While Ms. Ramsey stated in interrogatories that she had paid all bills and signed all checks, Tr. 404, Mr. Ramsey signed at least two checks in his capacity as assistant treasurer. Tr. 197-98, 223, 412. Mr. Ramsey also acted as secretary at Skywave's organizational meeting. Tr. 202. Mr. Ramsey, on his own initiative, found and arranged for Skywave's transmitter site. Tr. 377, 381-82, 408, 412. He also met with local officials about the site. Tr. 405. He participated in discussions with banks about loans for Skywave. Tr. 303, 385-87, 410-11. He helped prepare and review the application. Tr. 391. And he discussed the application with Ms. Ramsey. Tr. 391-92, 410.

36. Skywave's bylaws do not give exclusive control of the corporation to its directors. CHM Exh. 10, at 3. Ms. Ramsey views her spouse's official function as being one where he fills in when she cannot do the job. Tr. 204. Mr. Ramsey attends board meetings, votes on motions, ratifies corporate actions, reviews minutes, and he has signed consent minutes, which authorized the borrowing of money by Skywave. CHM Exhs. 7, 8, & 12; Tr. 221, 398, 399-400, 402-03, 411-12. Ms. Ramsey agreed that Skywave would always have two officers and directors even though Indiana law only requires one. Tr. 230. She selected her spouse because he is the person she most trusted. Tr. 298. Directors have equal power in Skywave's by-laws. CHM Exh. 10; Tr. 231, 232.

37. Originally, Ms. Ramsey intended to share the voting stock with a business associate, Karen Rogers, but Ms. Rogers decided against joining the applicant because she was unwilling to participate in obtaining the station. Tr. 181. Mr. Ramsey has performed those tasks which Ms. Ramsey expected Ms. Rogers to do. Tr. 230-31. Mr. Ramsey associates Skywave interests with himself and Ms. Ramsey also acts as if he has an interest. Tr. 404-05, 309-10. The Ramseys have worked at separate occupations and at times jointly. Tr. 416-17, 418. Mr. Ramsey is aware that Texas is a community property state. Tr. 376.

#### CHM

38. CHM is a Delaware limited partnership with three general partners, Beverly Hatcher, Amelie Cobb, and Joseph Mims, each of whom owns a 15% interest, and one limited partner, Kent S. Foster, who owns a 55% interest. Texas, Ltd. Exh. 10, at 4. Beverly Hatcher proposes to work full time, 40 hours per week, as the operations manager. CHM Exh. 3, at 1. She will oversee the station's daily programming, including news and information, entertainment, special affairs and advertising. *Id.* She will be coordinator of the programming and sales operations, supervise on-air staff, coordinate public affairs programming and develop and implement the station's EEO policy. CHM Exh. 3, at 1-2.

39. Ms. Hatcher is an African American woman. CHM Exh. 2, at 1. She has lived in Beaumont since 1984 and been involved in community activities. CHM Exh. 2, at 1; CHM Exh. 4, at 1-4. Her activities have included The Southeast Texas Region PTA, Beaumont Heritage Society, Beaumont Camp Fire Council, League of Women Voters, Beaumont Chapter of Charity Health Care Clinic, Lamar University

Mid-Management Advisory Committee. CHM Exh. 4. She has been an officer or board member of some of these organizations. *Id.*

40. Currently, Ms. Hatcher is also considering the purchase of a small chemical company in Nederland, Texas. Tr. 682-83. She plans on operating and developing the business herself with one part-time employee. Tr. 684. If she receives a grant of this license, she would put a manager in charge of the chemical company. Tr. 686. Her civic activities will also continue. Tr. 688-90.

41. Amelie Cobb proposes to work full time, 40 hours per week, as the station's business manager and finance officer. CHM Exh. 3, at 1-2. She would oversee the business affairs of the station, which will include equipment acquisition, payroll, advertising revenues, and expenses. CHM Exh. 3, at 2. Ms. Cobb is female and she has, with the exception of 1964-65, resided in Beaumont since 1961. CHM Exh. 2, at 2. She has been active in community affairs. These have included the Beaumont Housing Authority, Board of Directors of the Art Museum of Southeast Texas, the Junior League, Women's Symphony League, and Schlesinger Nursing Center. CHM Exh. 4, at 4-6. She is a regent of Lamar University and active in politics. *Id.* During the period 1962 to 1964, Ms. Cobb worked as a receptionist and continuity director at KFDK-TV and, from 1964 to June 1965, she worked at KTRH-AM as business manager and executive secretary to the general manager. CHM Exh. 5, at 4. Her position as a regent at Lamar University occupies 18-20 hours per month and she intends to continue that job in addition to working at the station. Tr. 727.

42. Joseph Mims proposes to work full time, 40 hours per week, as the general manager of the station. CHM Exh. 3, at 1. He will oversee the day-to-day operation of station operations. CHM Exh. 3, at 3. Mr. Mims is an African American and he has lived in Beaumont since 1975. CHM Exh. 2, at 2. Mr. Mims belonged to the Beaumont chapter of NAACP from 1981 to 1987. CHM Exh. 4, at 7. From 1971 to 1987, Mr. Mims worked at broadcast stations in on-air and management positions. CHM Exh. 5, at 1.

43. Although Mr. Mims is a broadcast consultant who provides the names of consulting engineers and lawyers to his clients, he did not suggest any engineers to CHM. Tr. 750, 755-56. He claims he did suggest one law firm but it was not a serious suggestion because it was one that he believed would not have done a satisfactory job. Tr. 756. Mr. Mims did not initiate the CHM proposal. The limited partner, Kent Foster, approached Amelie Cobb, the spouse of his longtime friend, in late May 1987. Tr. 712. They had discussed the possibility even earlier. Tr. 708. Mr. Foster told Ms. Cobb that there would be an advantage to having minority partners and she then contacted Mr. Mims and Ms. Hatcher. Tr. 713, 714-15. Even before he contacted Ms. Cobb, Mr. Foster retained an engineering firm and directed them to prepare engineering for the proposal. Tr. 718-19.

44. Ms. Cobb contacted Ms. Hatcher in June 1987 and it was during that month that the partners made an oral agreement. Tr. 531. That agreement became a written Memorandum of Agreement, which the parties signed on July 7, 1987. Tr. 531; Texas Ltd. Exh. 9. No official partnership documents were filed until two years later, shortly before the hearing. Tr. 544. Under the Memorandum of Agreement, Mr. Foster has an investor interest and financing rights. Texas, Ltd. Exh. 9, at 1-2. The



agreement also obligates Mr. Foster to lend the partnership \$150,000. Texas, Ltd. Exh. 9, at 2. The partnership agreement requires him to lend \$350,000. Texas, Ltd. Exh. 10, at 5. The partnership's Memorandum of Agreement was intended to govern the partnership until a partnership agreement was drafted; the partnership agreement was intended to reflect the Memorandum of Agreement. Texas, Ltd. Exh. 9, at 3; Tr. 669-70. It appears that Mr. Foster also decided that the partnership agreement should be registered in Delaware since none of the general partners made that decision. Tr. 671, 732. CHM represents that Mr. Foster is a passive investor in all broadcast applications in which he has an interest but, in fact, that was not the case in his proposal for Albuquerque, New Mexico. Tr. 618, 623.

45. Pursuant to their Memorandum of Agreement, the partners were to have paid their capital shares by July 10, 1987 when the application was filed but Ms. Hatcher did not complete her contribution until December 1988. Ms. Cobb did not pay her share until November 1988, and Mr. Mims paid his share when he bought his ticket to attend the May hearing. Texas, Ltd. Exh. 9, at 1-2; Tr. 530, 723. The actual partnership agreement was written in February 1989.

#### Ownership of the Media of Mass Communications

46. Texas, Ltd. has no media interests but Hubert Payne owns 12% of Channel 19, Inc., which holds the license for WOIO-TV, Shaker Heights, Ohio. Texas, Ltd. Exh. 2. Skywave and its owners have no media interests. Skywave Exh. 3. CHM and its partners have no media interests. CHM Exh. 6.

#### CONCLUSIONS

##### Issue 1: Whether the applicants' tower proposals will cause a hazard to air navigation.

47. CHM and Skywave's tower proposals exceed 500 feet above ground level. Although the FAA has indicated that that tower height violates part 77 of its rules, it has concluded that CHM and Skywave's tower will not present a hazard to air navigation because their tower locations are beyond airspace normally required for air traffic pattern operation. Initially a no hazard determination was issued by the FAA to Skywave and then, apparently during the hearing last May, the FAA withdrew its approval and issued a hazard determination. It also issued a hazard determination to CHM about the same time. It is the FAA's view that CHM and Skywave's proposals would cause "serious frequency intermodulation interference." The interference from 109.5 MHz, the proposed frequency, in combination with existing stations KKMV on 104.5 MHz and KAYD on 97.5 MHz results in interference from 109.5 MHz to the precision instrument landing system frequency serving Jefferson County Airport Runway 13. It is the FAA's view that operation on the proposed frequency would interfere with the frequency used in preparation for aircraft landings. In 1987, over 1600 aircraft used this navigational system employing 109.5 MHz. The FAA pointed out that both KAYD and KKMV have had proposals to move their towers approved by the FAA. If they move, the interference problem will be resolved.

48. At the outset of the proceeding, Mass Media Bureau counsel, Paulette Laden, believed that the Bureau and the FAA could resolve the frequency intermodulation problem. That has not occurred. Nevertheless, the Bureau indicated, on May 17, 1989, that CHM and Skywave's applications could be granted despite the hazard to air navigation by requiring that, after notification from the Commission that harmful interference is being caused, they reduce power to a point of no interference, cease operation, or take immediate steps to eliminate the interference. The FAA was notified of the Bureau's position and has not commented; it has not opposed the condition. Therefore, CHM and Skywave's proposals, will be conditioned as the Bureau requested.

49. Written testimony on this issue was exchanged on April 17, 1989, and two days later, on April 19, 1989, Texas, Ltd. moved to amend to designate a new site. Texas, Ltd. has been unable to demonstrate good cause for its amendment and its request was denied. *Memorandum Opinion and Order*, FCC 89M-1985, released July 28, 1989. The hearing record establishes that Texas, Ltd. was dilatory in resolving the air hazard problem and that the FAA has found its current site a hazard to air navigation. In addition, Texas, Ltd. has not found a new site that is hazard free. Accordingly, Texas, Ltd. has not demonstrated that it is technically qualified; its application will be denied.

##### Issue 2: Whether CHM misrepresented that it was financially qualified and whether CHM is financially qualified now.

50. CHM originally estimated that it would need \$335,000 to construct the proposed station and \$49,062 per month to operate. The total amount needed, excluding prosecution of the application, was estimated at \$482,000. These estimates were prepared by Joseph Mims, who is a general partner, former broadcast station manager, and broadcast consultant to groups applying for licenses.<sup>1</sup> CHM certified that it had reasonable assurance from the East Texas State Bank that it would provide a loan for \$350,000. In addition, Kent Foster, CHM's only limited partner, promised to lend CHM money to construct and operate. In a Memorandum of Agreement with the general partners, which was agreed to at the time the application was filed, Mr. Foster promised to lend \$150,000 to the applicant. Although, when Mr. Foster was asked at the hearing about how much money he would provide, he said he did not know.

51. When a partnership agreement was written in 1989, Mr. Foster became obligated to lend CHM \$350,000. Mr. Mims testified that he intended that CHM would use equipment vendor financing, but there is no documentation of that intent. Moreover, Ms. Hatcher, who certified the applicant's financial qualifications to the Commission, said that she did not intend to use equipment financing. While CHM's claim of equipment vendor financing cannot be credited, its certification would still have been warranted if the bank letter expresses reasonable assurance and Mr. Foster could provide the loan he promised.

52. Skywave and Texas, Ltd. challenge whether the letter from East Texas State Bank could legitimately have been relied on by Ms. Hatcher because she had not seen the bank letter when she certified and because the bank expressed only an intent to consider the loan. Although Ms. Hatcher had not seen the letter, she was assured by

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